

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

**In re:**

**WINSTAR COMMUNICATIONS, INC.,  
ET AL.,**

*Debtors.*

**CHRISTINE C. SCHUBERT, CHAPTER 7  
TRUSTEE,**

*Plaintiff,*

*v.*

**LUCENT TECHNOLOGIES, INC.,**

*Defendant.*

**Chapter 7**

**Case No. 01-1430 (JBR)**

**Adversary Proceeding  
No. 01-1063 (JBR)**

**APPELLANT'S STATEMENT OF ISSUES ON APPEAL**

Pursuant to Federal Rule of Bankruptcy Procedure 8006, Appellant Lucent Technologies, Inc. (“Lucent”) hereby provides a statement of its issues on appeal with respect to Lucent’s appeal to the United States District Court for the District of Delaware from the final judgment entered in this action on December 28, 2005 (Docket No. 373).<sup>1</sup>

1. With respect to Count X, did the bankruptcy court err by concluding that Winstar Communications, Inc. (“Winstar”) transferred an interest of the debtor in property and that the “earmarking doctrine” was inapplicable?
2. With respect to Count X, did the bankruptcy court err by concluding that Lucent was an “insider” of Winstar as of December 7, 2000?
3. Did the bankruptcy court err by drawing the negative inferences it drew from certain persons’ respective refusals to answer questions on the ground, as permitted by the Fifth Amendment to the United State Constitution, that the answer may tend to incriminate him or her?

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<sup>1</sup> Terms not otherwise defined herein shall have the meaning as set forth in the bankruptcy court’s Memorandum of Decision Including Findings of Fact and Conclusions of Law With Respect To Counts VII, X, and XI of the Second Amended Complaint and Counts 5 and 6 of the Second Amended Answer and Counterclaims (Docket No. 369)

4. With respect to Count X, did the bankruptcy court err by concluding that Winstar was insolvent as of December 7, 2000?
5. With respect to Count X, did the bankruptcy court err by concluding that Lucent was not entitled to the “new value” affirmative defense pursuant to 11 U.S.C. § 547(c)(4)?
6. With respect to Count VII, did the bankruptcy court err by concluding that Lucent breached a contract with Winstar Wireless, Inc. (“Wireless”)?
7. With respect to Count VII, did the bankruptcy court err by concluding that Wireless suffered damages from a breach of contract by Lucent?
8. With respect to Count XI, did the bankruptcy court err by subordinating pursuant to 11 U.S.C. § 510(c) Lucent’s claims to (i) the claims of all other creditors and (ii) certain interests of those entities that infused \$270 million of equity in Winstar on December 7, 2000?
9. Did the bankruptcy court err by denying Lucent’s negligent misrepresentation counterclaim?
10. Did the bankruptcy court err by denying Lucent’s fraud counterclaim?
11. Did the bankruptcy court err in concluding that all matters before the court were “core” matters pursuant to 28 U.S.C. § 157 and, to the extent not core matters, Lucent had consented to entry of final orders by the bankruptcy court?
12. Did the bankruptcy court err in refusing to permit Lucent to offer evidence of Winstar’s breaches of express covenants in the Second Credit Agreement dealing with foreign collateral, EBITDA, and transaction fees?
13. Was it error to permit the Trustee to withdraw her jury demand without Lucent’s consent?
14. Was it error to refuse to withdraw the reference with respect to this adversary proceeding?
15. Was it error to deny Lucent a right to a jury trial on any and all counts and counterclaims?

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Dated: January 19, 2006  
Wilmington, Delaware

Respectfully submitted,

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